

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.**  
*See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.*

**FILED BY CLERK**

**MAR -4 2011**

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

In re	)	2 CA-CV 2010-0160
	)	DEPARTMENT B
	)	
ONE RESIDENCE LOCATED AT	)	<u>MEMORANDUM DECISION</u>
5250 W. CAMINO TIERRA	)	Not for Publication
	)	Rule 28, Rules of Civil
	)	Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20101075

Honorable Ted B. Borek, Judge

AFFIRMED

---

Barbara LaWall, Pima County Attorney  
By Thomas J. Rankin

Tucson  
Attorneys for Appellee

Law Offices of Armand Salese, PLLC  
By Armand Salese

Tucson  
Attorney for Appellants

---

V Á S Q U E Z, Presiding Judge.

¶1 In this civil in rem forfeiture action, appellants Juan Parrado and Cecelia Campos Parrado appeal from the trial court’s order granting the state’s motion to strike their notice of claim asserting an interest in the subject property. On appeal, the Parrados contend the court erred in striking their notice of claim because 1) Cecelia had submitted a timely notice of claim in response to a supplemental notice of pending forfeiture; 2) the state had failed to properly serve the Parrados with the notice of pending forfeiture; and 3) the state’s motion to strike was itself untimely. The Parrados also argue “a single *res* cannot be the subject of multiple proceedings requiring submission of multiple claims.” For the reasons below, we affirm.

### **Factual and Procedural Background**

¶2 We view the evidence in the light most favorable to upholding the trial court’s order. *See In re U.S. Currency in Amount of \$26,980.00*, 199 Ariz. 291, ¶ 2, 18 P.3d 85, 87 (App. 2000). In 2009, the state seized property owned by the Parrados and others alleging that it had been used in the commission of various money laundering and drug-related offenses. On September 28, 2009, the state initiated a civil forfeiture action relating to currency, vehicles, and real property owned by the Parrados.<sup>1</sup> The state served the Parrados by mailing a notice of pending forfeiture and notice of seizure for forfeiture to their residence. The Parrados retained counsel in that action and requested that all future correspondence be mailed directly to counsel.

¶3 On February 11, 2010, pursuant to a separate drug investigation involving a different enforcement agency, the state initiated this second in rem forfeiture proceeding

---

<sup>1</sup>This action was numbered Pima County Cause Number C20096919.

against various items of real and personal property, including some of the Parrados' property listed in the first notice of pending forfeiture. On that same date, the state again served the Parrados by mailing a second notice of pending forfeiture and notice of seizure for forfeiture to their residence.<sup>2</sup> The Parrados filed a verified notice of claim in the second action on March 26, 2010. Apparently unaware that Cecelia was Juan's spouse, the state mailed a supplemental notice of pending forfeiture to the "spouse of Juan . . . Parrado," on April 26, 2010. Cecelia filed a verified notice of claim in response to this supplemental notice of pending forfeiture, as "spouse of Juan Parrado," on May 14, 2010.

¶4 The state filed a motion to strike the Parrados' March 26 notice of claim on the ground that it was untimely, pursuant to A.R.S. § 13-4311(D) and (F). The Parrados filed a response, and after a hearing the trial court granted the state's motion to strike. This appeal followed.<sup>3</sup>

### **Standard of Review**

¶5 "We review the trial court's factual findings for an abuse of discretion, but review its conclusions of law and issues of statutory interpretation de novo." *Home Builders Ass'n of Cent. Ariz. v. City of Maricopa*, 215 Ariz. 146, ¶ 6, 158 P.3d 869, 872

---

<sup>2</sup>The notice listed Cecelia Campos, Cecelia Campos Parrado, and Juan Randolph Parrado as parties to be served.

<sup>3</sup>As the state correctly points out in its answering brief, the Parrados failed to comply with Rule 15(b), Ariz. R. Civ. App. P., by neglecting to serve the Arizona Attorney General with copies of their opening brief. The state asks us to direct the Parrados to serve the attorney general in compliance with the rule. Despite the Parrados' lack of compliance, we need not do so at this stage of the proceedings. The case has been fully briefed and is now before us for decision; because we are not granting the Parrados relief, the attorney general has not been prejudiced by the lack of notice and we see no reason to delay the processing of this appeal.

(App. 2007). We interpret statutes in accordance with the intent of the legislature, “look to the plain language of the statute . . . as the best indicator” of its intent, and, “[i]f the language is clear and unambiguous, we give effect to that language.” *Fragoso v. Fell*, 210 Ariz. 427, ¶ 7, 111 P.3d 1027, 1030 (App. 2005).

## **Discussion**

### **I. Motion to Strike**

¶6 The Parrados first argue the state’s motion to strike the March 26 notice of claim was moot because Cecelia ultimately submitted a timely notice of claim in response to the state’s supplemental notice of pending forfeiture. The Parrados claim Cecelia would be “penalized” if the trial court did not permit her to file a timely claim, as Juan’s spouse, simply because “her claim in response to the [February 11] Notice was untimely.”

¶7 Section 13-4311(D) requires “[a]n owner of or interest holder in the property [to] file a claim against the property, within thirty days after the notice, for a hearing to adjudicate the validity of his claimed interest in the property.” Rule 6(e), Ariz. R. Civ. P., provides a claimant with an additional five days to file the notice of claim when the claimant has been served by mail. *See also* § 13-4311(B) (judicial in rem forfeiture proceedings governed by Arizona Rules of Civil Procedure unless different procedure provided by law). “No extension of time for the filing of a claim may be granted.” § 13-4311(F). “If the claim is not timely filed, the person does not become a claimant and lacks standing to contest the forfeiture.” *In re \$47,611.31 U.S. Currency v. Counterman*, 196 Ariz. 1, ¶ 4, 992 P.2d 1, 2 (App. 1999). The notice of pending

forfeiture was mailed on February 11, 2010. Thus, to be timely, the Parrados needed to file their notice of claim by March 18, 2010.

¶8 On appeal, the Parrados concede their notice of claim, filed on March 26, was untimely. They nevertheless contend “[t]he State filed a Supplemental Notice of Pending Forfeiture as to the spouse of Juan Parrado.” And, they argue, Cecelia filed a timely notice of claim as “[t]he spouse of Juan Parrado . . . and was entitled to be heard under A.R.S. § 13-4311(D).” We disagree. Cecelia was named in the February 11 notice of pending forfeiture, and nothing in the record suggests she had not been served properly with that notice. Nor does the plain language of § 13-4311 support the argument that a timely notice of claim to a supplemental notice is sufficient under these circumstances. The state’s motion to strike the Parrados’ claim was not rendered moot by Cecelia’s second notice of claim.

¶9 The Parrados next contend the trial court erred in granting the motion to strike because the state failed to serve them properly with the notice of pending forfeiture. They maintain that, in the notice of claim they had filed in the first forfeiture action, they had expressly directed that all future mailings be sent to their attorney’s office. And, the Parrados argue, by mailing the notice of pending forfeiture in the second action to their residence, the state failed to serve them at their “current address,” as required by A.R.S. § 13-4307(1) and Rule 5(c)(1), Ariz. R. Civ. P. Under the plain language of § 13-4307(1), “current address” relates to the property owner’s or interest holder’s address, not someone else’s. And, although Rule 5(c)(1) authorizes service to be

made on a party's attorney, the rule applies only to service after the party has made an appearance in the action.

¶10 Next, relying on Rule 12(f), Ariz. R. Civ. P., the Parrados contend the state's motion to strike their notice of claim was itself untimely and the trial court should have denied it on that basis. Rule 12(f) states that

[u]pon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these Rules, upon motion made by a party within twenty days after service of the pleading upon the party . . . , the court may order stricken from a pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

As the state correctly points out, Rule 12(f) is inapplicable here. The state did not move to strike the Parrados' notice of claim pursuant to Rule 12(f). Rather, it moved to strike the notice because it did not meet the timeliness requirements of § 13-4311(D) & (F). Thus the twenty-day time limit of Rule 12(f) did not apply to the state's motion.

## **II. Multiple Proceedings**

¶11 Finally, the Parrados argue the instant in rem proceeding was precluded by the previous pending in rem proceeding to the extent it involved the same property. "Section 13-4311 'requires a person to become a "claimant" in order to contest [a forfeiture] action[, which] entails the filing of a proper and *timely* claim asserting an interest in the property.'" *State v. Ochoa*, 224 Ariz. 214, ¶ 10, 228 P.3d 950, 953 (App. 2010), *quoting State v. \$5,500 in U.S. Currency*, 169 Ariz. 156, 160, 817 P.2d 960, 964 (App. 1991). Because the Parrados did not file a timely notice of claim, they did not become claimants in the action and thus lack standing to bring this argument on appeal.

*See also In re \$70,269.91 in U.S. Currency*, 172 Ariz. 15, 19-20, 833 P.2d 32, 36-37 (App. 1991) (when trial court strikes notice of claim, appellant lacks standing to contest forfeiture).

### **Disposition**

¶12 For the reasons stated above, we affirm the trial court's order striking the Parrados' notice of claim.

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge